

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILBUR LEROY ENTRIKIN

Claimant

VS.

BEN SCHREINER CONSTRUCTION

Respondent

AND

ALLIED MUTUAL INSURANCE COMPANY

Insurance Carrier

Docket No. 198,641

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated August 30, 1996, wherein the Administrative Law Judge granted claimant temporary total disability benefits and medical treatment commencing May 6, 1996, until claimant either reached maximum medical improvement, was released to a regular job, or returned to gainful employment.

ISSUES

Respondent raises the following issues upon appeal from the preliminary hearing:

- (1) Whether the employee suffered accidental injury.
- (2) Whether claimant's alleged injury arose out of and in the course of his employment.

- (3) Whether there was competent evidence in accordance with K.S.A. 44-532 for the Administrative Law Judge to award temporary total disability benefits and whether the Administrative Law Judge exceeded his jurisdiction in awarding benefits when the record lacked evidence of any health care provider removing claimant from the work force.
- (4) Any and all other issues that can be raised before the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The authority to appeal from preliminary hearings comes from two sources. K.S.A. 44- 534a(2), as amended, provides in part:

“A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee’s employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.”

The evidence presented indicates claimant’s accidental injury did arise out of and in the course of his employment and both issues (1) and (2) above listed, are found in claimant’s favor for purpose of this opinion.

Additionally, K.S.A. 44-551, as amended, addresses review by the Appeals Board in stating as follows:

“(b)(1) All acts, findings, awards, decisions, rulings or modifications of findings of awards made by an administrative law judge shall be subject to review by the board upon written request for any interested party within 10 days. . . . On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings.”

(2) [A] review by the board shall not be conducted under this section unless is alleged that the administrative law judge exceeded the administrative law judge’s jurisdiction in granting or denying the relief requested at the preliminary hearing.”

K.S.A. 44-534a, as amended, specifically grants the administrative law judge the authority to award both temporary total disability compensation and medical benefits. The Administrative Law Judge, in awarding claimant temporary total disability benefits and medical treatment, did not exceed his jurisdiction. As such, this matter would not be appealable under either K.S.A. 44-534a, as amended, or K.S.A. 44-551, as amended.

Respondent's final issue which requests review of "[a]ny and all other issues that can be raised before the Board" fails to adequately state an issue for review and contradicts K.S.A. 44-555b(a), as amended, which states:

"The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."

In appealing a generic, all-inclusive issue the respondent has violated the specific language of K.S.A. 44-555c which prohibits the Appeals Board from considering any matters which have not been considered by the administrative law judge. As such, the final issue raised by the respondent is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated August 30, 1996, should be, and is hereby, affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

c:

Jeff K. Cooper, Topeka, KS
Matthew S. Crowley, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director